U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOE I. GALLEGOS and DEPARTMENT OF THE AIR FORCE, CANNON AIR FORCE BASE, NM

Docket No. 03-1548; Submitted on the Record;
Issued August 26, 2003

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant has more than a 13 percent permanent impairment of his left upper extremity; and (2) whether appellant is entitled to an additional schedule award for his right upper extremity.

On March 25, 1993 appellant, then a 44-year-old meat cutter, filed an occupational disease claim alleging that his right elbow condition was a result of the physical demands of his work. On September 28, 1993 he filed an occupational disease claim alleging that his right shoulder condition was a result of wrapping meat by hand because the meat wrapping machine was broken. The Office of Workers' Compensation Programs accepted the first claim for an aggravation of right lateral epicondylitis and approved surgery for a right lateral release. The Office accepted the second claim for right rotator cuff tear. On March 1, 1995 appellant underwent surgery for right shoulder decompression and right radial head resection, which the Office authorized. On December 11, 1995 he underwent arthroscopic acromioplasty and debridement of scar tissue in the right shoulder. On May 7, 1998 the Office issued a schedule award for a 30 percent permanent impairment of the right upper extremity.[1]

On January 11, 2000 appellant filed a claim for a schedule award. He submitted medical evidence supporting that he had an 18 percent permanent impairment of the right upper extremity. An Office medical adviser reviewed the medical evidence and confirmed the rating. On February 16, 2000 the Office issued a schedule award for an 18 percent permanent impairment of the right upper extremity.[2]

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[1] On July 19, 1999 appellant underwent excision of the right distal clavicle and right biceps tenodesis. On October 18, 2000 he underwent arthroscopic bursectomy and removal of painful hardware from his right shoulder.

[2] Although the clinical findings supported an impairment of 18 percent, the Office appears to have paid this award in addition to the award of 30 percent previously paid.

On August 16, 2000 appellant sustained a left shoulder injury while lifting over his head a tub of trimmings weighing between 55 to 60 pounds. On March 6, 2001 the Office accepted this claim for left rotator cuff tear syndrome and authorized surgery. On March 12, 2001 appellant underwent a left rotator cuff repair with acromioplasty and coplaning of the distal clavicle and excision of the anterior portion of the coracoacromial ligament. On October 17, 2001 he had surgery for a retear of the left anterior rotator cuff. On February 1, 2002 he underwent arthroscopic repair of a Type 2C SLAP tear in the right shoulder.

On August 27, 2002 appellant filed a claim for a schedule award. He submitted an impairment rating from Dr. Roger J. Wolcott, a specialist in physical medicine and rehabilitation. On August 12, 2002 Dr. Wolcott reported that appellant had reached maximum medical improvement. Using the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (4th ed. 1993), he found a six percent permanent impairment of both shoulders due to crepitation. Dr. Wolcott also found a nine percent impairment of the right shoulder and an eight percent impairment of the left due to abnormal motion. On a scale of 10 he rated appellant's pain as 6 to 7 on the right and 5 to 6 on the left, but he assigned no impairment based on sensory deficit.

An Office medical adviser reviewed Dr. Wolcott's findings and determined that appellant had a 14 percent permanent impairment of the right upper extremity and a 13 percent permanent impairment of the left. He confirmed Dr. Wolcott's rating for abnormal motion, but noted that the current edition of the A.M.A., *Guides* allowed no impairment due to crepitation. He did give appellant the maximum allowable rating for pain due to involvement of the axillary nerve, assigning five percent for each upper extremity.

On April 22, 2003 the Office issued a schedule award for a 13 percent permanent impairment of the left upper extremity. The Office noted that appellant also had a 14 percent permanent impairment of the right upper extremity, but because he had already received payment for a 30 percent impairment of that extremity, no additional payment was due.

The Board finds that appellant has a 14 percent permanent impairment of his left upper extremity.

Section 8107 of the Federal Employees' Compensation Act[3] authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides.*[4]

For the left shoulder Dr. Wolcott reported the following ranges of motion: 145 degrees flexion, 46 degrees extension, 28 degrees adduction, 140 degrees abduction, 40 degrees internal rotation and 68 degrees external rotation. Using Figure 16-40, page 476, of the fifth edition of the A.M.A., *Guides*, 140 degrees flexion represents an impairment of the upper extremity of

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404 (1999).

3 percent, while 150 degrees flexion represents an impairment of 2 percent.[5] Dr. Wolcott's finding of 145 degrees falls between these 2 figures. The A.M.A., *Guides* instructs as follows: "Impairment values for motion measurements falling between those shown in the pie chart may be adjusted or interpolated proportionally in the corresponding interval."[6] The Board finds that 145 degrees flexion represents an upper extremity impairment of 2.5 percent.

Adjusting proportionally, appellant's 46 degrees represents a left upper extremity impairment of 0.4 percent.[7] Adduction of 28 degrees represents an impairment of 1 percent and abduction of 140 degrees represents an impairment of 2 percent.[8] Internal rotation of 40 degrees represents an impairment of 3 percent and external rotation of 68 degrees represents no impairment of the upper extremity.[9]

The upper extremity impairment resulting from abnormal shoulder motion is calculated from the pie charts by adding directly the upper extremity impairment values contributed by each motion unit.[10] For the left upper extremity, Dr. Wolcott's findings establish that appellant has an impairment of 8.9 percent due to abnormal range of motion, which rounds to 9 percent.

The Office medical adviser properly followed the grading scheme and procedure for determining impairment of the upper extremity due to sensory deficit or pain.[11] He identified the nerve innervating the area of involvement as the axillary nerve. The most this nerve can contribute to the impairment of the upper extremity is five percent, representing "absent sensibility, abnormal sensations, or severe pain that prevents all activity," which the Office medical adviser awarded.

When multiple impairments of the extremity are present because of loss of motion that is not strictly attributed to a peripheral nerve lesion, the peripheral nerve impairment is combined with the loss of motion impairment.[12] Appellant's abnormal motion impairment of 9 percent combines with his pain impairment of 5 percent for a total left upper extremity impairment of 14 percent,[13] which is 1 percent more than the Office awarded. The Board will modify the Office's April 22, 2003 decision, to reflect that appellant has a 14 percent permanent impairment of the left upper extremity.

[5] A.M.A., *Guides* 476, Figure 16-40 (5th ed. 2001).

[6] *Id*. at 474.

[7] *Id*. at 476, Figure 16-40.

[8] *Id*. at 477, Figure 16-43.

[9] *Id*. at 479, Figure 16-46.

[10] *Id*. at 474.

[11] *Id*. at 482, Table 16-10.

[12] *Id*. at 481.

[13] *Id*. at 604 (Combined Values Chart).

For the right shoulder Dr. Wolcott reported the following ranges of motion: 133 degrees flexion, 48 degrees extension, 34 degrees adduction, 142 degrees abduction, 42 degrees internal rotation[14] and 74 degrees external rotation. Using the same figures and charts as before, these measures represent upper extremity impairments of 3, 0.2, 0.6, 1.8, 2.8 and 0 respectively, for a total right upper extremity impairment of 8.4 percent for abnormal motion, which rounds to 8 percent. An 8 percent impairment due to abnormal motion combines with the maximum 5 percent impairment for pain for a total right upper extremity impairment of 13 percent.

On May 7, 1998 the Office issued a schedule award for a 30 percent permanent impairment of the right upper extremity. On February 16, 2000 the Office issued an additional award for an 18 percent permanent impairment of the right upper extremity, effectively compensating appellant for a 48 percent loss of use of his right arm. Dr. Wolcott's findings do not support that appellant has a greater impairment of his right arm than that already awarded. For this reason the Board will affirm the Office's April 22, 2003 decision not to issue an additional schedule award for the right upper extremity.[15]

The April 22, 2003 decision of the Office of Workers' Compensation Programs is affirmed, as modified, to find that appellant has a 14 percent permanent impairment of the left upper extremity.

Dated, Washington, DC
August 26, 2003

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[14] The handwritten notation for internal rotation was correct and is not easy to read: It could be 42 or 52. The Board will use the measure that benefits appellant more.

[15] Appellant contests the improvement of his right arm. He had multiple surgeries after the May 7, 1998 schedule award, which might have improved his range of motion and discomfort, but other explanations are possible. The May 7, 1998 schedule award might have overestimated his impairment. That award took into account severe and constant crepitation with active range of motion of the dominant right elbow, an impairment that the A.M.A., *Guides* no longer recognizes. Appellant's lower impairment rating on the right is, therefore, due in part to a change in the criteria for evaluating permanent impairment.